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6 LEADERS IN COMMUNITY
ALTERNATIVES, INC.
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 WILLIAM EDWARDS, ROBERT
JACKSON, JAMES BROOKS, and
13 KYSER WILSON on behalf of
themselves and others similarly
14 situated,

15 Plaintiff,

16 v.

17 LEADERS IN COMMUNITY
ALTERNATIVES, INC., et al,
18 Defendants.
19

Case No. 3:18-cv-04609-WHA

**DEFENDANT LEADERS IN
COMMUNITY ALTERNATIVES,
INC.'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
LEAVE TO FILE OPPOSITION TO
ADMINISTRATIVE MOTION TO
SEAL**

Judge: Honorable William Alsup

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21 Defendant LEADERS IN COMMUNITY ALTERNATIVES, INC. hereby
22 opposes Plaintiffs' Motion for Leave to File Opposition to Defendant's
23 Administrative Motion to Seal (Doc. #75).

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ARGUMENT

On April 8, 2019, Defendant filed an Administrative Motion to Seal Portions of Robert Crandall's Declaration. Pursuant to Local Rule 7-11(b), Plaintiffs were required to file their Opposition no later than 4 days after the Administrative Motion has been filed. Therefore, Plaintiffs' Opposition was due by April 12, 2019. Ten days after their response was due, on April 22, 2019, Plaintiffs filed a motion for leave to file their untimely opposition. Plaintiffs' Opposition should be denied for the following reasons.

First, Plaintiffs allege they needed additional time because they received several documents and subpoenas in a short time period in this case. However, Plaintiffs fail to provide any explanation as to why they did not seek leave before their Opposition was due on April 12, 2019. In fact, Plaintiffs did not make *any* attempts to seek additional time before April 22, 2019—two weeks after they received the administrative motion and 10 days after their response was due. The first time Plaintiffs' counsel contacted Defendant about obtaining additional time was on April 22, 2019, and counsel did not provide any explanation as to why they needed additional time, even after defense counsel pointed out that Plaintiffs' counsel failed to provide any basis for their request. To the extent Plaintiffs' counsel simply forgot to timely oppose the Administrative Motion and is now applying *post-hoc* rationalizations, this is not good cause for leave to file their opposition. Their motion should therefore be denied.

Second, the opposition Plaintiffs seek to file is without merit. The data that Defendant moved to file under seal was produced to Plaintiffs under a protective order on February 27, 2019. At no time did Plaintiffs challenge the confidentiality designation. Further a party seeking to file under seal a document produced under seal in discovery only needs to establish that there is "good cause" for sealing the record. *In re Midland Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012) ("[A] particularized showing of 'good cause' under

1 Federal Rule of Civil Procedure 26(c) is sufficient to preserve the secrecy of sealed
 2 discovery documents attached to non-dispositive motion.”) Here, Defendant
 3 provided good cause that was specific to the circumstances, as it is a company that
 4 goes through the competitive bidding process with public agencies to obtain work.
 5 *See Nixon v. Warner Comm'ns, Inc.*, 435 U.S. 589, 598, 98 S.Ct. 1306 (1978)
 6 (stating that where a party shows that its documents contain sources of business
 7 information that might harm its competitive standing, the need for public access to
 8 the records is lessened).

9 Contrary to Plaintiffs’ characterization, the data that Defendant moved to file
 10 under seal is narrowly-tailored to just specific numbers and numerical analysis
 11 regarding consumer data, and is not public information. Defendant did not even
 12 seek to seal entire documents, but selectively chose data that it believed would
 13 harm its competitive standing. While individual charges may be known to
 14 particular clients,¹ the distribution of charges, the geographic demographics of LCA
 15 participants, the number of clients who successfully complete the program, and the
 16 amount of write-offs, as just some examples, are not publicly known. (*See*
 17 *Administrative Motion to Seal*.) LCA’s competitors could use this data to adjust
 18 their business models and/or use this to their tactical advantage in competing with
 19 LCA for the same work. Courts have held that research that compiles sales data
 20 and market data may be sealed, as public disclosure may result in improper use by
 21 competitors who may circumvent expending their own resources in obtaining the
 22 information at a company’s expense. *Algarin v. Maybelline, LLC*, No. 12CV3000
 23 *AJB DHB*, 2014 WL 690410, at *4 (S.D. Cal. Feb. 21, 2014) (granting motion to
 24 seal Maybelline’s sales and market data); *Apple Inc. v. Samsung Electronics Co.,*
 25 *Ltd.*, 727 F.3d 1214, 1225, 1228 (Fed. Cir. 2013) (Parties’ respective profit, cost

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 27 ¹ Plaintiffs also attached a copy of a sliding scale that they indicate they obtained
 28 through a student who had requested the sliding scale as a Public Records Request
 Act. Defendant has confirmed the sliding scale is for San Francisco, and not
 Alameda County, which is the sliding scale at issue in this case.

1 and margin data that could be used by their suppliers in contract negotiations to
 2 extract price increases for component parts and Apple's market research reports
 3 derived from consumer survey data that could be used by its competitors to predict
 4 Apple's future product releases and marketing campaigns constituted the type of
 5 information that could be used to the parties' competitive disadvantage.); *Joint*
 6 *Stock Soc. v. UDV North America, Inc.*, 104 F. Supp.2d 390, 405 (D. Del. 2000)
 7 (disclosure of distiller's consumer research studies, strategic plans and marketing
 8 information that if disclosed would give competitors new insights into how its
 9 product is advertised, distributed and marketed had the potential to subject the
 10 distiller to serious competitive injury).

11 Therefore, Plaintiffs' request to file an untimely opposition should be denied
 12 as Plaintiffs have failed to show good cause as to why their opposition was
 13 untimely, and their opposition is without merit.

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 15 Dated: May 6, 2019

BURKE, WILLIAMS & SORENSEN, LLP

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 17 By: /s/ Kristina Doan Strottman

18 Susan E. Coleman
 Kristina Doan Strottman

19 Attorneys for Defendant
 20 LEADERS IN COMMUNITY
 21 ALTERNATIVES, INC.
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